

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

D.V., *et al.*,

Plaintiffs,

-v-

CITY OF NEW YORK, *et al.*,

Defendants.

22-CV-10974 (JPO)

ORDER

J. PAUL OETKEN, District Judge:

On December 30, 2022, Plaintiff D.V. (acting both in her individual capacity and as the mother and natural guardian of E.B.) sued Defendants, the City of New York and the New York City Department of Education, seeking to recover attorney’s fees from a proceeding under the Individuals with Disabilities Education Act. (ECF No. 1.) On January 6, 2023, Plaintiffs served Defendants. (ECF Nos. 8, 9.) On January 27, 2023, Plaintiffs filed a First Amended Complaint. (ECF No. 13.) On March 28, 2023, Defendants filed an Answer to the First Amended Complaint. (ECF No. 14.) Since then, Plaintiff has not moved for summary judgment, filed a joint pretrial order, or otherwise prosecuted this case in any affirmative manner. Accordingly, on August 29, 2023, this Court ordered Plaintiffs to show cause within fourteen days why this case should not be dismissed for failure to prosecute. (ECF No. 15.) Plaintiff has not taken any action responsive to the Court’s order to show cause.

Federal Rule of Civil Procedure 41(b) authorizes a district court to dismiss an action “if the plaintiff fails to prosecute or to comply with the rules or a court order.” *Baptiste v. Sommers*, 768 F.3d 212, 216 (2d Cir. 2014). It is settled that Rule 41(b) “gives the district court authority to dismiss a plaintiff’s case *sua sponte* for failure to prosecute.” *LeSane v. Hall’s Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001). Dismissal without prejudice is appropriate here. Plaintiff

was “given notice that further delay would result in dismissal,” *U.S. ex rel. Drake v. Norden Sys., Inc.*, 375 F.3d 248, 254 (2d Cir. 2004), and there is prejudice where Plaintiff has caused an “unreasonable delay.” *LeSane*, 239 F.3d at 210. Dismissal without prejudice appropriately strikes a balance “between alleviating court calendar congestion and protecting a party’s right to due process and a fair chance to be heard.” *Id.* at 209.

Accordingly, this action is dismissed without prejudice to refiling.

The Clerk of Court is directed to close this case.

SO ORDERED.

Dated: September 13, 2023
New York, New York



J. PAUL OETKEN
United States District Judge